

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JOSEPH P. GARVEY

v.

UNITED STATES OF AMERICA

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Ca. No. 08-10353-MLW

ORDER

WOLF, D.J.

January 3, 2011

Defendant Joseph P. Garvey filed a Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. §2255 (the "§2255 Motion"). He raised five grounds for relief. In a December 23, 2010 Order, the court scheduled an evidentiary hearing with respect to Ground One, which alleged that Garvey's attorney disregarded specific instructions from Garvey to file a notice of appeal, and dismissed all other grounds. Having been informed that Garvey would soon be released from prison, the court ordered Garvey to report whether he wished to withdraw Ground One or proceed to the evidentiary hearing. On December 28, 2010, Garvey filed a motion to withdraw Ground One. The motion to withdraw Ground One is being allowed. Because all other grounds have been dismissed, the court is denying the §2255 Motion.

Pursuant to §2255 Rule 11(a), the court must "issue or deny a certificate of appealability [("COA")] when it enters a final order adverse to the applicant." To receive a COA, Garvey must show that

"'reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong.'" Miller-El v. Cockrell, 537 U.S. 322, 338 (2003) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)). "[A] claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail." Id. at 338. Here, the dismissal of Garvey's claims is not debatable because, as described in the December 23, 2010 Order, the allegations in Grounds Two through Five are either conclusively contradicted by the record or could not, if true, entitle Garvey to relief under established legal principles. A COA is, therefore, being denied with respect to all grounds.

Accordingly, it is hereby ORDERED that:

1. Garvey's Motion to Withdraw Ground One (Docket No. 17) is ALLOWED.
2. The §2255 Motion (Docket No. 1) is DENIED.
3. A COA is DENIED as to all grounds raised in the §2255 Motion.

/s/ Mark L. Wolf
UNITED STATES DISTRICT JUDGE